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OFFICE OF THE ATTORNEY GENERAL

April 4, 2014

LEGAL MEMORANDUM **Ref: LEG 13-0952**

TO: Honorable Judith T. Won Pat, Ed.D.
Speaker, I Mina'Trenta Na Liheslaturan Guåhan

FROM: Attorney General of Guam

SUBJECT: Payment of Merit Bonuses

We are in receipt of your letter dated October 30, 2013 requesting legal guidance for Mr. Manley and other employees in his situation regarding merit bonus for FY 2002. Because the evaluation and performance of Mr. Manley is a personnel matter we are declining to address his individual case; however, we are responding in general to your question of retroactive merit bonus pay for FY 2002.

On September 28, 2001 Bill No. 185(COR) became Public Law 26-35. Chapter IV, Section 4(a)(1) states:

(a) Salary Increments and Merits Bonuses Freeze.

(1) Restriction. Notwithstanding any other provisions of law, rule or regulation, effective October 1, 2001, there is hereby put into effect a freeze on all **salary increments and merit bonuses** which will remain in effect through September 30, 2002, and for twelve (12) months from the date the increment was due, and shall be applicable to all positions within every branch of government, public corporations, all government of Guam departments, bureaus, and agencies, instrumentalities, entities or sub-entities of the Executive, Legislative, and Judicial Branches, the Mayor's Council, *and* Mayoral Offices. (Emphasis added)

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On September 30, 2004 Bill No. 363(LS) became Public Law 27-106 via a legislative override. Chapter VI, Section 4(a)(1) states:

Section 1. Reinstatement of Salary Increments and Merit Bonuses.

(a) Notwithstanding any other provision of law, *not less than* a one-step salary increment shall be uniformly restored to all eligible employees of all branches and entities of the government of Guam; autonomous agencies and public corporations; and the Mayors Council and Mayoral Offices.

(b) The information provided by the Administration conflicts regarding the amount necessary to fully restore salary increments to all employees, and *I Liheslatura* is therefore unable to determine an exact amount required. However, *I Liheslatura* finds that Fiscal Year 2003 lapses totaling over Fourteen Million Dollars ($14,000,000.00) have been identified and used as recently as June 2004 by *I Maga'lahi* to fund various agencies, including *I Maga'lahi's* Office, and were not directed to pay for tax refunds or to lift the freeze on salary increments.

(c) Notwithstanding any other provision of law or this Act, lapses in Fiscal Year 2004 and all other prior years appropriations to the Executive branch from the General Fund shall *not* revert to the General Fund, but shall be identified by *I Maga'lahen Guåhan* and reported to the Speaker of *I Liheslaturan Guåhan* within forty-five (45) days of the close of Fiscal Year 2004, identifying the source and amount of the lapse; provided that these unexpended lapses shall be expended as necessary for the payment of the uniform restoration of all salary increments due to all Executive Branch government of Guam employees funded by the General Fund pursuant to Subsection (a). Unless otherwise provided in this Act, lapses shall *not* be used for any other purpose. A report detailing the amount and source of all lapses to be used for restoration of salary increments shall be transmitted by I Maga'lahi to I Liheslaturan Guåhan at least fourteen (14) days prior to the proposed expenditure. Failure to provide notice as provided in this Section shall render the expenditure null and void. Section 2. Above-step Recruitment and Reclassification Moratorium. Notwithstanding any other provision of law, rule, or regulation, and except as provided in Chapter IV of Section 5, effective October 1, 2004, there is

> hereby put into effect a government-wide moratorium on reclassifications and above-step recruitments, which shall remain in effect through September 30, 2005, and shall be applicable to all positions within every branch of government; public corporations; all government of Guam departments, bureaus, and agencies; instrumentalities, entities or sub-entities of the Executive, Legislative and Judicial Branches; the Mayors Council and Mayoral Offices, except for the following positions: (1) Teachers, School Health Counselors and on-call substitutes of the Department of Education; (2) Licensed and allied healthcare professionals, to include the Territorial Veterinarian; (3) Academic personnel at the University of Guam and the Guam Community College; (4) Positions determined by the Civil Service Commission ("CSC") as difficult to recruit and retain; and (5) Uniformed, Forensic, and Crime Lab Personnel for Law Enforcement.

In reviewing the language of the two laws above it is clear that P.L. 26-35 froze both "salary increments and merit bonuses" for fiscal year 2002. Although the title of Chapter VI, Section 4(a)(1) of P.L. 27-106 reads "**[R]einstatement of Salary Increments and Merit Bonuses.**", there is no language in the text of the law authorizing the reinstatement for the merit bonuses FY2002.

Without the statutory authority to reinstate merit bonuses for FY 2002 the Governor cannot pay merit bonuses for FY 2002 as merit bonuses were expressly prohibited by law for FY 2002. In other words unless a new law is enacted to retroactively reinstate merit bonuses for FY 2002 no merit bonus for FY 2002 may be paid.

FRED NISHIHIRA
Assistant Attorney General